GIFTS

ADMINISTRATIVE LAW DIVISION

442-1089

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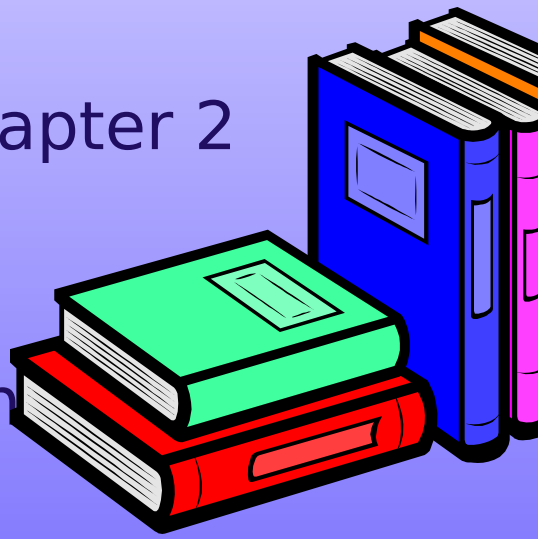
REFERENCES

- Standards of Ethical Conduct for Employees of the Executive Branch
  - 5 C.F.R. 2635
- Joint Ethics Regulation (JER), Chapter 2
  - DOD 5500.7-R
- 5 U.S.C. § 7342 (Foreign Gifts)
- 31 U.S.C. § 1353 (Travel Paymen



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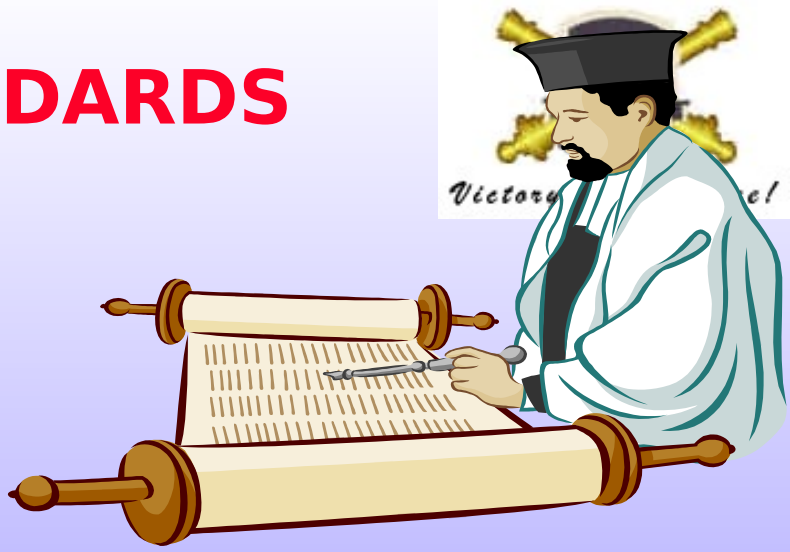
BEDROCK STANDARDS



- 5 C.F.R. 2635.101(b)
- <u>Relevant Principles:</u>
  - (b)(1) - Public service is a public trust
  - (b)(4) - Employees shall not solicit or accept a gift from a person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency
  - (b)(7) - Employees shall not use public office for private gain

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GIFTS

- FUNDAMENTAL QUESTION - Who is giving the gift?

- An outside source?
- A Foreign Government?
- A fellow employee?

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GIFTS FROM OUTSIDE SOURCES

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GIFTS FROM OUTSIDE SOURCES

- GENERAL PUNITIVE RULE:
  - 5 C.F.R. 2635.202(a)
  - Employee shall not, directly or indirectly, solicit or accept a gift
  - from a prohibited source or
  - given because of the employee's official position

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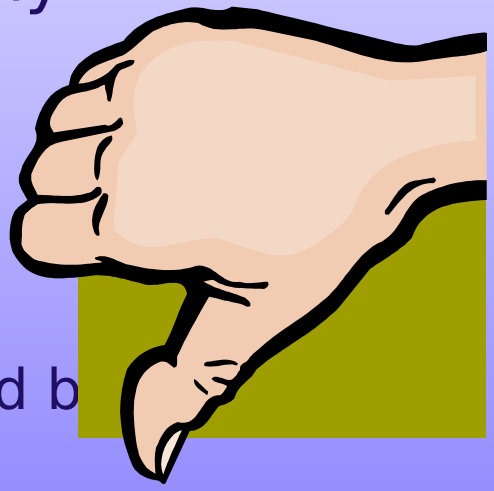
Gifts from Outside Sources

- "Prohibited Source" includes any person or entity that:
  - is seeking official action
  - does or seeks to do business
  - is regulated by
  - has interests substantially affected b employee's official duties
  - organization whose majority is made up of one or more of the above



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Gifts from Outside Sources

- Indirect gifts given to:
  - parent, spouse, sibling, child, dependent relative because of that person's relationship to the employee
  - any other person, including **charity,** on the basis of designation, direction or recommendation of the employee

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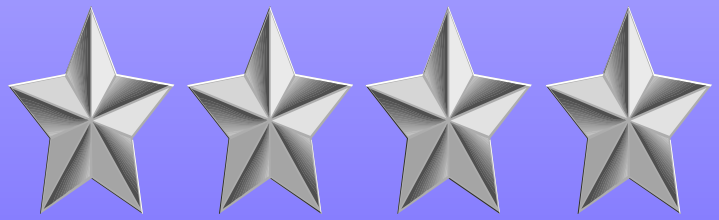
Gifts from Outside Sources

- "Official Position" Test
  - Gift would not have been solicited, offered or given had the employee not held the status, authority or duties associated with his position



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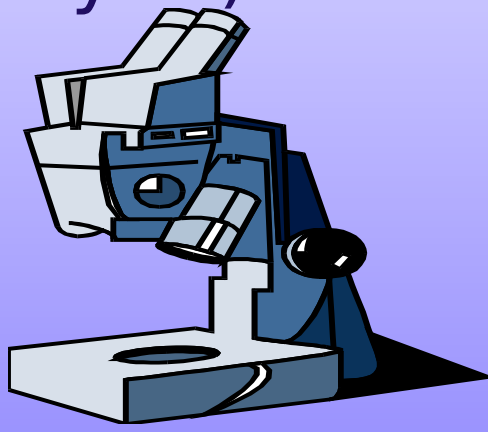
Gifts from Outside Sources

- A Practical Approach (3 part analysis)



- Is it a gift (exemption)?
- Is there an exception?
- Would acceptance undermine Government integrity?

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GIFTS FROM OUTSIDE SOURCES

- TEST #1 - Is it a Gift?
  - Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance or any other **item having monetary value**
  - It includes services
  - It includes gifts of training, transportation, travel, lodging and meals

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Gift Exemptions

- FOOD AND REFRESHMENTS
- (the coffee and donut rule)
  - modest amounts
  - not part of a meal

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Gift Exemptions

- GREETING CARDS and items with little intrinsic value such as plaques, certificates and trophies which are intended solely for presentation

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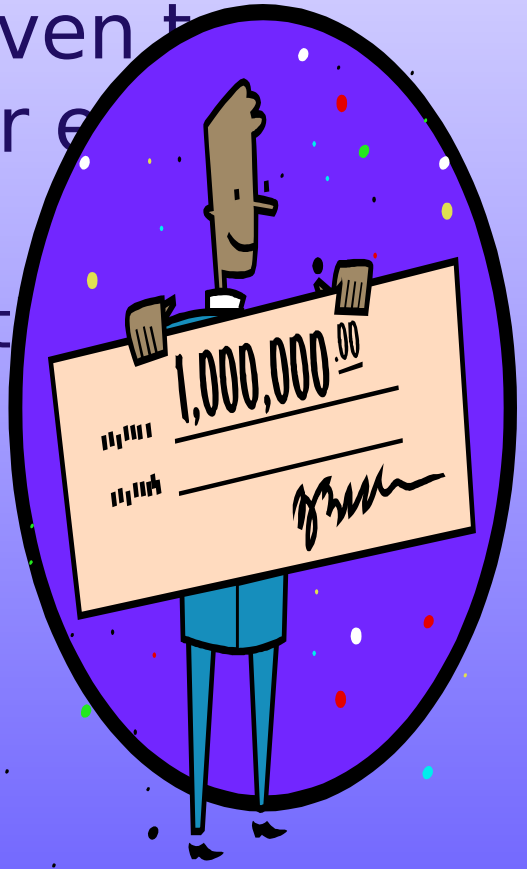
Gift Exemptions

- REWARDS AND PRIZES given t
  competitors in contests or e
  - open to the public
  - entry not part of official dut



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Gift Exemptions

- DISCOUNTS AND BENEFITS
  - available to general public
  - available to all Government employees
  - available to all military personnel

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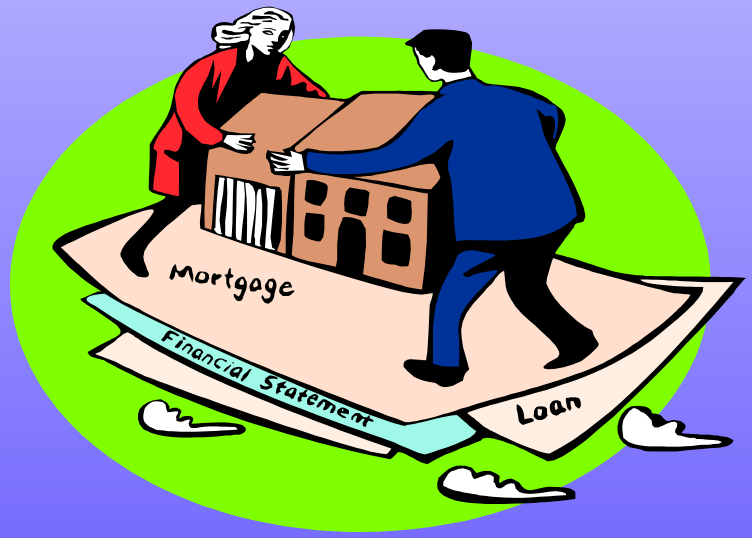
Gift Exemptions

- LOANS from banks and other financial institutions
  - Terms generally available to the public



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Gift Exemptions

- PAID FOR BY U.S. GOVERNMENT OR SECURED UNDER CONTRACT
- PAID FOR BY EMPLOYEE
  - Fair Market Value
- ACCEPTED BY GOVERNMENT UNDER STATUTE

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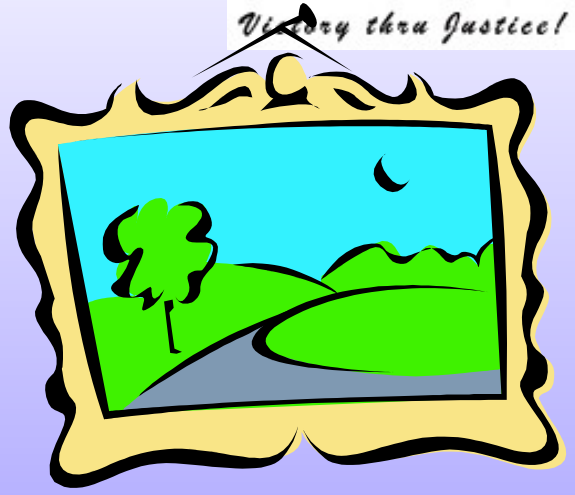
GIFT STATUTES



- Gifts to the Government:
  - Gifts of Travel (31 USC 1353)
  - Foreign Gifts (5 USC 7342)
  - Gifts for the benefit of DOD Components (10 USC 2601)
  - Gifts for the benefit of Navy enlisted members (10 USC 7220)
  - Gifts to Navy vessels (10 USC 7221)
  - Gifts to the USNA (10 USC 6973/6974)

GIFT EXCEPTIONS -TEST # 2

- <u>GIFTS OF $20 OR LESS</u>
- $20 per source, per occasion
- $50 max per source, per year
- FMV is retail value of the gift
- No cash or investment instruments
- Can decline items to keep it at $20 or under but may not pay differential over $20

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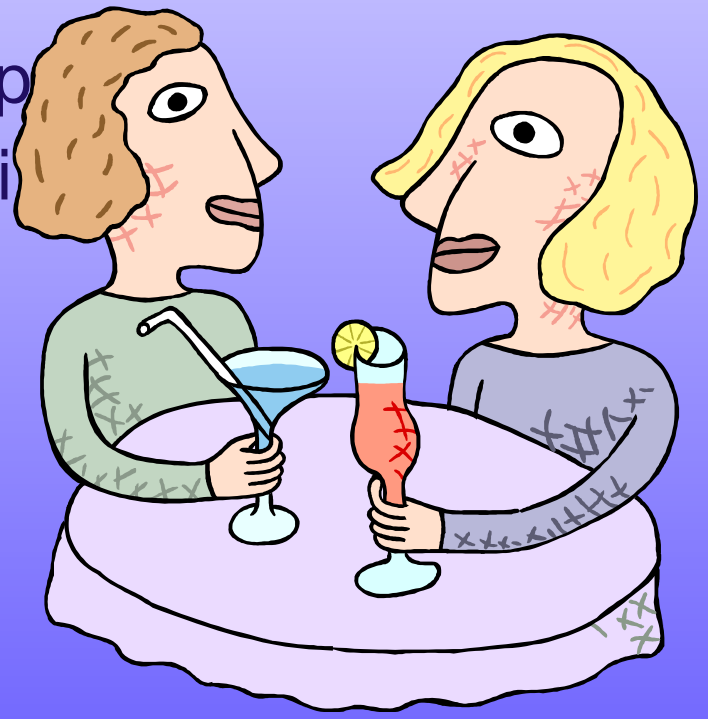
Gift Exceptions

- GIFTS BASED ON PERSONAL RELATIONSHIP
  - family relationship
  - personal friendshi



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Gift Exceptions

- DISCOUNTS AND SIMILAR BENEFITS
  - reduced membership fees in professional organizations
  - benefits offered to groups in which membership is unrelated to Government employment
  - benefits offered to the public through similar groups
  - benefits offered from other than prohibited source and class is not based on position, rank or rate of pay

Gift Exceptions

- AWARDS
  - meritorious public service or achievement
  - grantor not impacted by recipient's performance of duties
  - higher standards for cash and awards > $200
- HONORARY DEGREES
  - institution of higher education
  - examine timing of award

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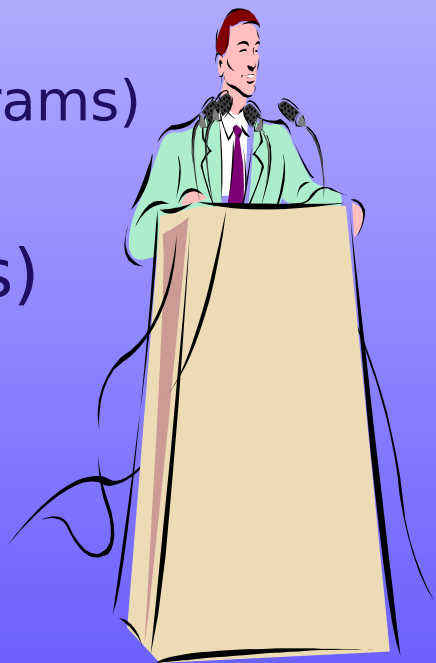
Gift Exceptions

- <u>WIDELY ATTENDED GATHERING AND OTHER EVENTS</u>
- Speaking engagements
- Widely attended gatherings
  - agency interest (furthers agency programs)
  - gift from other than event sponsor
- Free attendance (no travel benefits)



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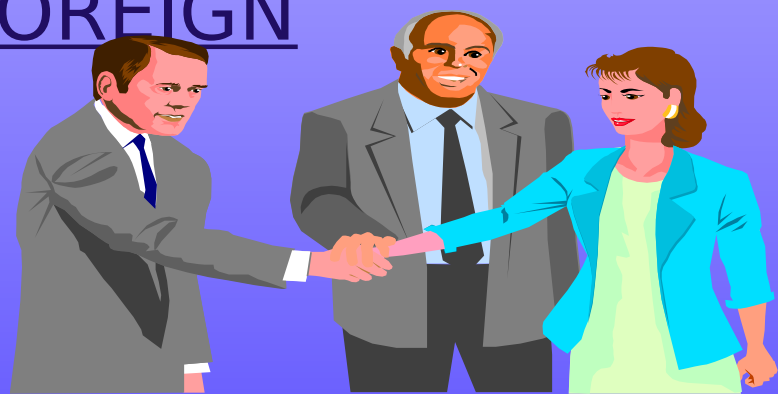
Gift Exceptions

- GIFTS BASED ON OUTSIDE BUSINESS RELATIONSHIPS
- SOCIAL INVITATIONS FROM OTHER THAN PROHIBITED SOURCES
- MEALS, REFRESHMENTS, AND ENTERTAINMENT IN FOREIGN AREAS



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Gift Exceptions

- <u>DOD UNIQUE EXCEPTIONS</u>
- Free attendance at community relations events (JER 2-202.a)
- Educational scholarships and grants for DOD employees or their dependents (JER 2-202.b)
- Gifts at ship launch and other similar roll-out ceremonies (JER 2-300.b)

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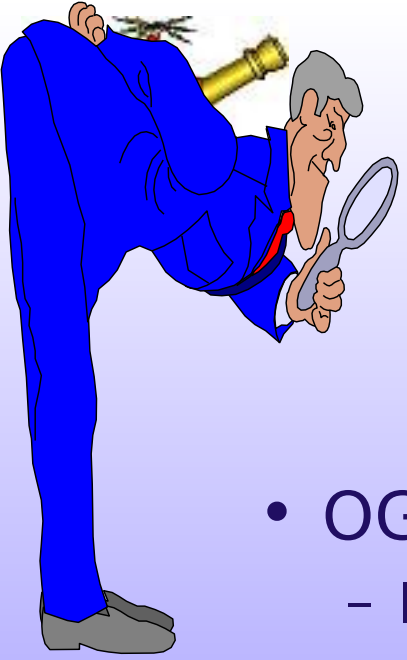

Use of Gift Exceptions

Victory thru Justice!

- OGE position:
  - If a gift falls within one of the exceptions, acceptance of the gift will not violate any basic obligation of public service, including the obligation to avoid creating the appearance of an ethical violation (5 C.F.R. 2635.204)
- May still be appropriate to decline a gift

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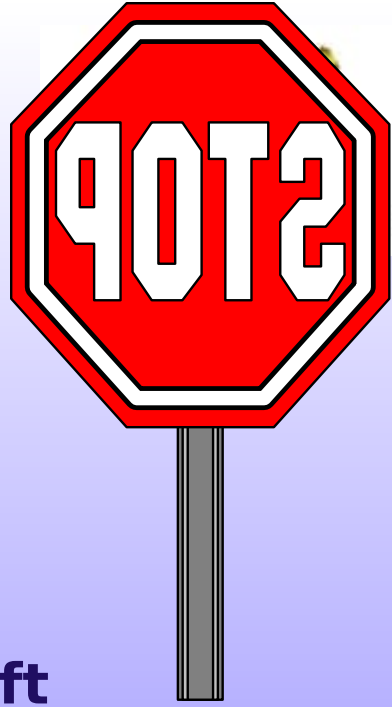
TEST # 3



- Even if an exception applies, an employee may not:
  - **solicit or coerce the offering of a gift**
  - accept a gift in return for being influenced
  - accept a gift in violation of statute
  - accept gifts from the same or different sources so frequently that a reasonable person would question integrity
  - accept Vendor Promotional Training

DISPOSITION OF IMPROPER GIFTS

- REFUSE gift if possible
- Tangible items - return gift or pay FMV
- Intangible items - pay FMV
- Perishable items - after consulting with supervisor or ethics counselor:
  - donate to charity
  - share within office
  - destroy

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FOREIGN GIFTS

FOREIGN GIFTS

- U.S. Constitution (Art I, Sec. 9, Cl. 8) prohibits acceptance of any "present, Emolument, Office or Title from a King, Prince or foreign state" without the consent of Congress
- Congress consented to acceptance of gifts from Foreign Governments in 5 USC § 7342

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FOREIGN GIFTS

- Implemented by DODD 1005.13
- **No solicitation of gift**
- Individual may accept gift of “minimal value” (retail value in U.S. at time of acceptance of $285 or less)
- Must aggregate (JER 2-300.b):
  - multiple gifts from donor at single presentation
  - gifts to spouse

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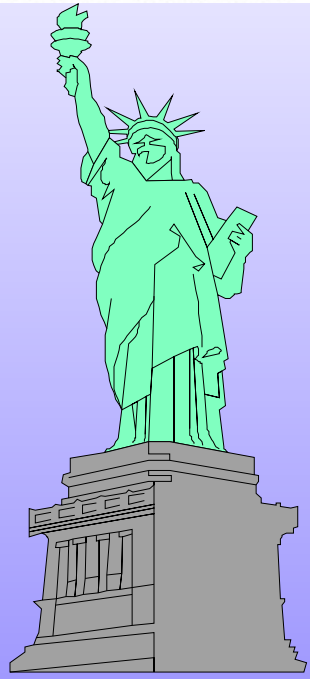
FOREIGN GIFTS



- Gifts in excess of “minimal value”
  - attempt to refuse (explain law)
  - may accept if refusal would result in embarrassment or affect foreign relations
- Accept as Gift to the United States
- Gift must be reported to and deposited with the approval authority within 30 days

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FOREIGN GIFTS

- Gift in excess of "minimal value" will be:
  - returned to donor (at U.S. expense)
  - retained for use within DOD Component
  - forwarded to GSA for utilization decision or disposal (sale)
  - recipient may purchase
    - negotiated sale at FMV

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GIFTS BETWEEN EMPLOYEES

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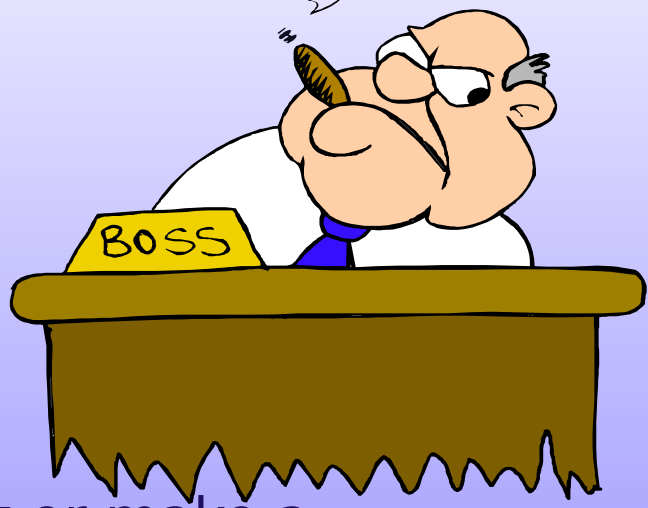
Gifts Between Employees



- <u>GENERAL PUNITIVE RULE</u>
  - 5 C.F.R. 2635.302(a)
- An employee may not:
  - Directly or indirectly, give a gift or make a donation toward a gift for an official superior
  - Solicit a contribution from another employee for a gift to either his own or the other employee's official superior

Gifts Between Employees

- GENERAL PUNITIVE RULE
  - 5 C.F.R. 2635.302 (b)
- An employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:
  - no superior-subordinate relationship; and
  - there is a personal relationship that would justify the gift

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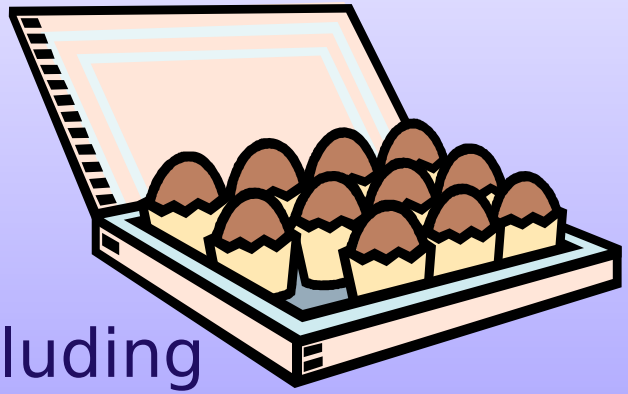
Gifts Between Employees



- EXCEPTION
  - 5 C.F.R. 2635.304(a)
- On an **occasional basis**, including traditional gift giving situations
  - items with value of $10 or less (no cash)
  - food and refreshments shared in the office
  - personal hospitality in subordinate's home
  - host/hostess gifts

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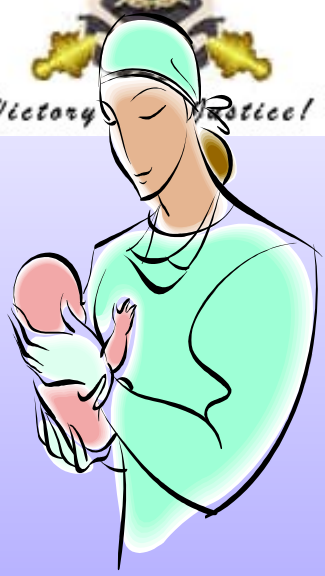
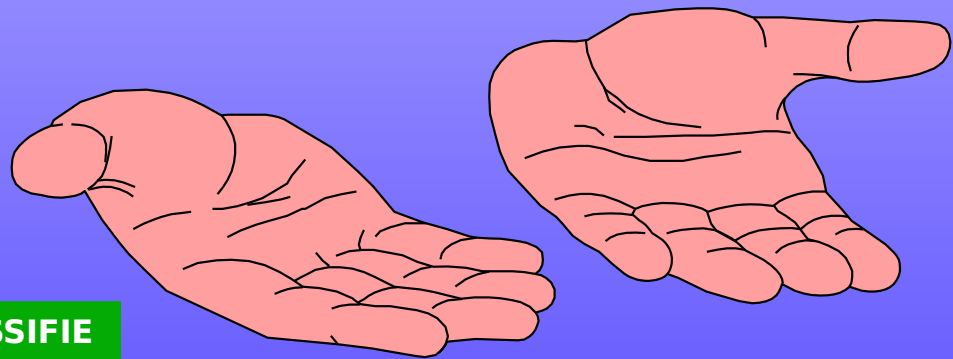
Gifts Between Employees



- EXCEPTION
  - 5 C.F.R. 2635.304(b)
- On **special infrequent occasions**, a gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or employee receiving less pay
  - occasion of personal significance
  - occasion that terminates superior-subordinate relationship

Gifts Between Employees

- <u>SOLICITATION</u>
- Authorized for special infrequent occasions and for food and refreshments to be shared in the office
  - voluntary contributions
  - nominal amounts ($10), although employees are free to donate more
  - JER 2-203.b



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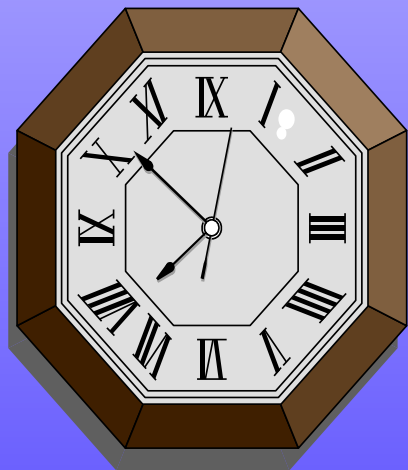
Gifts Between Employees

- APPROPRIATE TO THE OCCASION
- $300 per donating group (JER 2-203)
  - aggregate gifts if employee is in more than one donating groups
  - gifts to spouses
  - exclude food and entertainment at event marking departure
  - pieces of a larger gift



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Gifts Between Employees

- JER 2-203(a)(3) - “Perry Amendment”
- Gift from donating group may exceed $300 when:
  - appropriate to the occasion
  - termination of superior-subordinate relationship
  - **“it is uniquely linked to the departi employee’s position or tour of duty and commemorates the same”**

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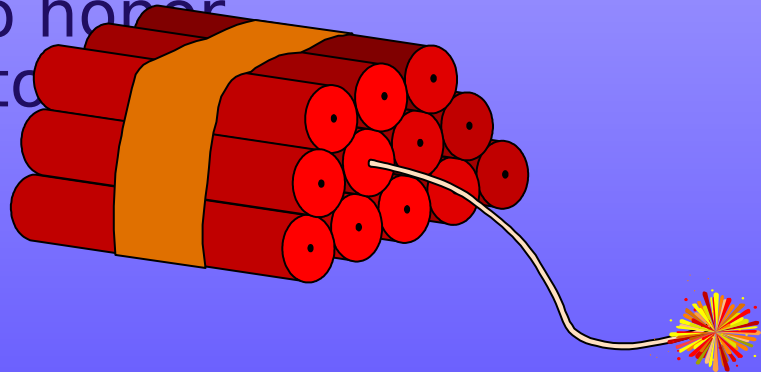
Gifts Between Employees

- Helpful Hints:
  - Be proactive - be part of the planning process
  - keep the number of donating groups to a reasonable number (no competition)
  - ensure donation is voluntary
  - remember purpose is to hon
    departing superior not to



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TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

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Travel Payment from Non-Federal Sources

- Rule: Agencies may accept payment from a non-Federal source for travel, subsistence, and related expenses in connection with an employee's attendance at a meeting or similar function relating to his official duties
- 31 U.S.C. § 1353
- 41 C.F.R. Chapter 304
- JER Section 4-101

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Conditions for Acceptance

- Attendance at a meeting or similar function that is related to employee's official duties
- Function takes place away from duty station (employee must be in a travel status)
- Employee attends in an official capacity
- Acceptance would not bring into question the integrity of DOD programs (conflict analysis)
- Acceptance generally approved in advance
- No solicitation

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Meeting or Similar Function

- **Includes:** conferences, seminars, speaking engagements, symposia, training courses, awards programs, or other similar event sponsored or co-sponsored by a non-Federal source
- **Excludes:**
  - Meetings or events required to carry out an agency's mission
  - Promotional Vendor Training or other meetings held for the primary purpose of marketing product/services

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1353 Payments - Miscellaneous

- Travel on Commercial Air
- Gift to Spouse
- Payments in excess of Per Diem Limits
- Payment in Kind or Reimbursement
- Reporting Requirements
- Use of alternative gift acceptance authorities

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Gifts of Travel From Foreign Governments

- Rule: An employee may accept gifts of travel or expenses from a foreign government for travel taking place entirely outside the U.S. of more than minimal value if acceptance is consistent with the interests of the U.S.
- 5 U.S.C. § 7342(c)(1)(B)(ii)

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Gifts of Travel From Foreign Governments

- Minimal Value
- Travel Entirely Outside U.S.
- Solicitation is prohibited
- Approval Authorities
- Reporting Requirements
- Use of alternative gift acceptance authorities

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Accepting Travel as a Gift to the Agency

- Acceptance of gift of travel in accordance with agency gift acceptance authority
  - 10 U.S.C. § 2601 (Army, Air Force, and Navy)
  - 10 U.S.C. § 2608 (DOD Activities)
- Follow agency gift acceptance procedures
- May not use if 31 U.S.C. § 1353 applies
- JER 4-101(b)(2) provides examples of proper use

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Frequent Flyer Miles

- P.L. 107-107, Section 1116 (FY 2002 NDAA), as implemented by JTR C1200A, JFTR U1200A, and JER Chapter 4, as revised (10 Jan 02)
- Employees (military and civilian) may retain for personal use promotional items (including frequent flyer miles, upgrades, or access to carrier club facilities) received as a result of using travel or transportation services obtain at government expense or accepted under 31 U.S.C. § 1353

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Frequent Flyer Miles

- Promotional items must be:
  - Obtained under the same terms as those offered to the general public
  - At no additional cost to the Government
- Applies to promotional items received before, on, or after effective date of P.L. 107-107 (28 Dec 01)

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Frequent Flyer Miles

- Issues:
  - Flying in uniform
  - Tax implications
  - Potential for Travel Abuse
    - Increased number of meetings at distant locations
    - Increased senior official travel
    - Increased pressure to approve other methods of upgrade
    - Increased efforts to avoid government contract flights

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Upgrade on Official Travel

- An employee may upgrade to first class or business class when it is the result of:
  - an on the spot upgrade available to public
  - a promotional offer
  - use of personal funds or frequent flyer miles
  - membership in club or group
- An upgrade may not be accepted if provided on the basis of the employee's grade or position

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Bumping on Official Travel

- Involuntary – any compensation received belongs to the government
- Voluntary – any compensation received belongs to the employee provided:
  - delay will not interfere with mission
  - does not result in any additional cost to the government (employee must incur these expenses)

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SUMMARY

- Know the rules
- Use common sense
- Be proactive
- **QUESTIONS?**

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